

COMMITTEE ON LANDS AND BUILDINGS

February 6, 2007

4:30 PM

In the absence of the Chairman, the Clerk called the meeting to order and requested a motion to elect a Chairman Pro Tem.

On motion of Alderman Forest, duly seconded by Alderman Smith, it was voted to elect Alderman Roy as Chairman Pro Tem.

The Clerk called the roll.

Present: Aldermen Smith, Forest, Roy, Long

Absent: Alderman Thibault

Chairman Roy addressed item 3 of the agenda:

3. Consideration of a request of Parks, Recreation and Cemetery Department that City-owned property be declared surplus and an easement be granted to the City by Tires, Inc. in conjunction with the Piscataquog Trailway across Main Street.

Notes:

Board of Assessors: report to be submitted at meeting.

Planning: reporting to be submitted at meeting.

Tax Collector: no interest in disposition, not a tax-deeded parcel.

On motion of Alderman Smith, duly seconded by Alderman Long, it was voted to declare the property surplus and to give the property in exchange for acceptance of the easement that was contained within the package.

Chairman Roy addressed item 4 of the agenda:

4. Communication from Deputy City Solicitor Arnold regarding easements for parcels of land involved in the settlement of a class action suit.

On motion of Alderman Smith, duly seconded by Alderman Long, it was voted to discuss this item.

Tom Arnold, Deputy City Solicitor stated as noted in my cover letter to the Committee, back in August of 2005, the City was notified that it was a member of a class action that was filed in the Southern District of Indiana, a Federal District Court, of all places. This class action, to summarize it, the claims alleged were that railroads, in the City's case the B & M and maybe Gilford Transportation, had granted an easement to AT&T to install fiber optic cable along its railroad bed. The allegation was that in certain places the railroads did not own the railroad bed in fee but rather only had an easement for their railroad tracks and operations. And consequently, where they had an easement, they did not have authority to grant AT&T an easement to install the fiber optic cable. However, in response to the railroads granting the easement to AT&T, AT&T did install the fiber optic cable and the cable that we are talking about is presently installed in the rail bed in the City. The City was then notified that...by the time I issued my letter we were notified that, on two parcels, we were eligible for compensation under the terms of the class action settlement. Subsequent to writing my letter, I got two more parcels, which we were notified we were eligible for compensation on, and I have those here with me tonight, if you would like to see them. As part of the settlement, in order to get compensation, you need to grant an easement to AT&T for the fiber optic cable that is currently in place, who owned the railroad bed, and hence that's why I'm here tonight, asking for that approval. Pursuant to the class action settlement, we are entitled to compensation in return for those easements, in varying amounts. As you can see, two parcels were listed in my letter, and the compensation is there. The other two parcels call for compensation of \$1,967.70 and \$420. That, I guess, in summary fashion, is why I presented this request to the Committee, and I'd be glad to answer any questions if you have them.

Alderman Long stated, Tom, the compensation allowed. Who determines the allowed compensation?

Mr. Arnold stated that was determined basically I guess by the Court when it approved the settlement. The compensation to be paid is set forth in the settlement documents in the class action litigation.

Alderman Long stated now you just referenced compensation of a thousand dollars.

Mr. Arnold stated I have two additional parcels here. Let me hand these out to you now, because it has the tax map attached to it which shows you what we're talking about. The two additional ones involve the Transportation Center down at the intersection of Canal and Granite Streets, and Stark Park, down along the railroad line by the river.

Alderman Long stated okay, so I don't have to go through this contract here. What was the allowed compensation on those again, Tom?

Mr. Arnold stated for the Transportation Center it was \$100. For Stark Park it was \$1,967.70.

Alderman Long stated and these compensations are in...the Court decided what the compensation was?

Mr. Arnold stated well the Court settlement set forth a formula by which the compensation would be determined. If you'd like the remaining two, I can give those to you.

Alderman Forest stated the question I have is to Carol. When it comes time for a vote and a motion, will we have to make two separate motions or can we combine all of this into one?

Carol Johnson, Deputy City Clerk, stated you can combine it all into one.

Alderman Smith stated, Tom, the amount comes up for these four parcels approximately just short of \$11,000. Is that correct?

Mr. Arnold stated that sounds about correct. I haven't added them all together, Mr. Smith. But I note, as I said, one is in the amount of \$8374.87 so you're in the ballpark, yes.

Alderman Smith made a motion to grant the easements.

Chairman Roy stated before I accept that motion, Alderman Smith, I'd like to ask a few questions from the Chair. Tom, the negotiation of this. I'm looking at the numbers. They vary from \$100 to \$8374. How was that determined?

Mr. Arnold stated I couldn't answer that for you, Alderman. That was part of the settlement agreement that took place in the Southern District of Indiana. I, of course, was not a party to that. The Settlement Center indicates that it's in accordance with a formula that the Court approved.

Chairman Roy stated so our option is really only to accept this and go forward. Is that I'm hearing from you between the lines?

Mr. Arnold stated well, there won't be any negotiation over the price to be paid. I think that's fair to say, yes.

Alderman Long asked Tom, was it correct that there was a formula that we followed to come up with this compensation?

Mr. Arnold responded there was a formula that was approved by the Court. And the Settlement Center, which is overseeing all these parcels, used that formula to determine the compensation to be allowed on these four parcels.

Alderman Long asked do we know what that formula was?

Mr. Arnold responded I do not know off the top of my head. I probably have it in my documents. My file on this is probably a good six inches thick. So I could probably provide that to you, but I don't have it off the top of my head here.

Alderman Long stated just a follow-up, Mr. Chairman. So the Court did the formula to come up with these amounts?

Mr. Arnold stated the Court approved the formula to come up with these amounts. I imagine that formula was arrived at between counsel for the plaintiffs in the class action and for AT&T.

Chairman Roy stated we don't seem to have a lot of options here, Tom. My next question is going to be where do the dollars as they come into the City go to? Or is that up to this Committee?

Mr. Arnold stated I would believe they'd probably go to the General Fund. However, I would note that one of these parcels is the Waste Water Treatment Plant out on Winston Street. I do not know whether that would go into the General Fund or would go into EPD funds.

Chairman Roy stated okay. Question for the Clerk. If we approve this this evening, will it come out at the full Board or will it come out at our next meeting?

Ms. Johnson stated it's my understanding that we have placed this on the agenda because of the time-sensitiveness of the case settlements.

Mr. Arnold stated one of the reasons, as I explained to some of the Aldermen, that I asked it be placed tonight is that under the class action documents, we have 45 days to execute and return these easements and some related documents. If I had waited for your normal meeting on the third Tuesday of the month, it would have had to have been reported out to the Board that night to meet the time limit set forth in the documents. So, I guess the critical date for Board action, although it would certainly be handy to have it done tonight, it could wait till the next Board meeting.

Chairman Roy stated Tom, just a brief follow-up and then I'll accept Alderman Smith's motion. These funds are not currently in our hands? They'll be sent to us after all documentation...

Mr. Arnold stated that is correct.

On motion of Alderman Smith, duly seconded by Alderman Forest, it was voted to grant the easements on the four parcels and to accept the funds to appropriate accounts.

Alderman Smith stated Mr. Chairman, I'd just like to thank the members of this Committee. It wasn't a scheduled meeting but Trailway was so important, and hopefully we can get it moved all the way to Goffstown. I want to thank the members for allowing me to have this meeting. Thanks a lot.

Alderman Forest stated Ward 12 also.

There being no further business to come before the Committee, on motion of Alderman Long, duly seconded by Alderman Forest, it was voted to adjourn.

A True Record. Attest.

Clerk of Committee